IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.11.2007

CORAM

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

W.P.No.24002 of 2007
and
M.P.No.1 of 2007

Dr.Anu Gayathri Petitioner

vs.

1. State of Tamil Nadu rep. By its
   Secretary to Government,
   Health and Family Welfare
   Department,
   Secretariat,
   Chennai 600 009.

2. The Director of Medical Education,
   Kilpauk,
   Chennai 600 010.

3. Dr.T.P.Kalanidhi,
   Dean,
   Madras Medical College and
   Hospital, Chennai 600 003. Respondents

Petition under Article 226 of the Constitution of India praying for the issue of a Writ of mandamus directing the first respondent to consider the representation dated 4.7.2007 of the petitioner and to pass appropriate orders to rescue the third respondent from holding the post of Dean, Madras Medical College and Hospital or any other Government Medical Colleges and Institutions in Chennai or Chengalpet Medical College and Hospital until the disposal of the Criminal Case in C.C.No.3260 of 2007 pending on the file of the IV Metropolitan Magistrate Court, Saidapet, Chennai.

For petitioner : Mr.N.S.Nandakumar

For respondents: Mr.N.Senthilkumar, G.A. (W).

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ORDER

The writ petition is filed for a direction to consider the representation dated 4.7.2007 and to rescue the third respondent from holding the post of Dean, Madras Medical College and Hospital or any other Government Medical Colleges and Institutions in Chennai or Chengalpet Medical College and Hospital until the disposal of the Criminal Case in C.C.No.3260 of 2007 pending on the file of the IV Metropolitan Magistrate Court, Saidapet, Chennai.

2. The case of the petitioner is that she was married to the son of the third respondent and there was some dispute between the petitioner and the son of the third respondent and a criminal case has been filed against the son of the third respondent as well as the third respondent in C.C.No.3260 of 2007 under Dowry Prohibition Act and the same is pending. The petitioner's further case is that the criminal case is at the stage where P.Ws.11 and 12 are to be examined as witnesses. The said witnesses are the persons studying under the third respondent who is working as Dean in Madras Medical College and therefore, the anticipation of the petitioner is that the said witnesses may not give correct evidence and also give evidence in favour of the third respondent under whom they are studying. In view of the same, the representation is made to the first respondent, who is the employer of the third respondent to take action against the third respondent preventing him from acting as Dean of Madras Medical College or Dean of any other Colleges in Chingleput and Chennai.

3. Mr.N.S.Nandakumar, learned counsel appearing for the petitioner would submit that even though the prayer in the writ petition is to rescue the third respondent from holding the post of Dean, Madras Medical College and Hospital or any other Government Medical Colleges and Institutions in Chennai or Chengalpet Medical College and Hospital until the disposal of the Criminal Case in C.C.No.3260 of 2007, his further representation also contains various averments and hence, it is open to the first respondent to take disciplinary action as per the Tamil Nadu Government Servants Conduct Rules, 1973. The learned counsel for the petitioner further submits that Rule 3A of the said Rules enables the Government to take disciplinary action against any person who give or take abet the giving or taking of dowry.

4. Rule 3A of the Tamil Nadu Government Servants Conduct Rules, 1973 reads as follows:-

> "No Government servant shall --
> (i) give or take abet the giving or taking of dowry; or

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(ii) demand, directly or indirectly, from the parents or guardian of a bride or bridegroom as the case may be any dowry.

Explanation – For the purposes of this rule, dowry has the same meaning as in the Dowry Prohibition Act, 1961 (Central Act 28 of 1961)."

Therefore, according to the counsel for petitioner, the third respondent, being one of the accused and father-in-law of the petitioner, is an abettor and on the basis of which, the first respondent, being employer, has got a duty to take disciplinary actin against the third respondent.

5. I do not agree with the contentions of the learned counsel for the petitioner. When there is any misconduct committed by a Government Servant under his control, it is always open to the first respondent to proceed against the third respondent as and when he decides on material facts that, prima facie, materials are available to proceed against him and not for this court, while exercising its power under Article 226 of the Constitution of India, to direct him to take action. The writ petition fails and the same stands dismissed. No costs. The connected Miscellaneous Petition is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssk.

To

1. The Secretary to Government,
   Health and Family Welfare Department,
   Secretariat, Chennai 600 009.

2. The Director of Medical Education,
   Kilpauk, Chennai 600 010.

1 cc to Mr.N.S. Nandakumar, and S. Prabhu, Sr. 67706
1 cc to Government Pleader, Sr,67404

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SJ (CO)
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